

*United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III  
CLERK

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NEW ORLEANS, LA 70130

October 3, 2005

TO ALL COUNSEL OF RECORD:

No. 04-51074 Lamar Homes Inc v. Mid-Continent Cslty  
USDC No. 1:03-CV-553

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Dear Counsel:

The Court has determined to certify to the Supreme Court of Texas the unresolved issue of Texas law controlling this appeal.

The Court desires that counsel prepare a proposed certification of the statement of fact and question. This is to be the joint product of counsel, and only to the extent that counsel cannot agree, the Court will accept separate statements with respect to the particular part on which the agreement cannot be reached.

By suggesting the essential inquiry, the Court does not foreclose suggestions from counsel as to re-wording of the inquiry or suggestions of one or more subsidiary questions which may emanate from the main point of contention.

The Court invites counsels' attention to the cases cited in the attached appendix with the request that they be studied carefully. These cases reflect the type of assistance which the Court seeks in this certification process. The Court does not wish separate submissions of certificates which merely repeat the positions of the parties as briefed. Points of difference may be explicitly reserved but an agreed joint submission will greatly enhance the certification process.

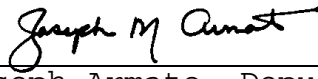
The Court suggests that counsel might best assist in the process by meeting and working out the joint stipulation of facts and legal issues and, to the extent necessary, separately preparing those parts in dispute. The Court is confident that counsel will act in accordance with its request.

Filings may be typewritten and photocopied, nine copies are to be filed. Where there are differences, supporting memoranda may be submitted simultaneously.

Counsel will prepare its responses and file same within thirty days of receipt of this letter.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By:   
Joseph Armato, Deputy Clerk

Enclosures

Mr E Thomas Bishop  
Mr Geoffrey Robert Unger  
Mr Patrick J Wielinski  
Mr Lee Howard Shidlofsky  
Mr John Logan Engvall  
Mr Joseph Jonathan Hlavinka  
Ms Jennifer Bruch Hogan  
Mr Richard Phillips Hogan Jr